

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

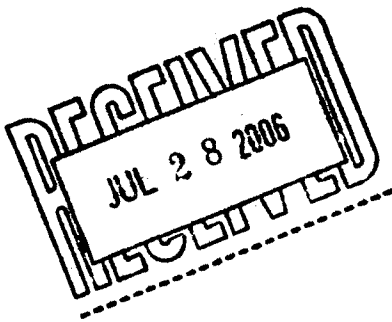
No. 810

SEPTEMBER TERM, 2005

PEOPLE'S COUNSEL FOR HARFORD COUNTY

v.

AMERICAN TOWER, INC., ET AL.



Kenney,
Sharer,
Woodward,

JJ.

Opinion by Kenney, J.

Filed: July 27, 2006

AHC

Appellant, People's Counsel for Harford County, appeals the decision of the Circuit Court for Harford County, reversing the denial by the Harford County Board of Appeals ("the Board") of a zoning special exception for appellee, American Towers, Inc. ("American Towers"). People's Counsel presents one question for our review:

Did the lower court err in finding that there was insufficient evidence to support the Board of Appeals' denial of the special exception and that reasonable minds could not reach the same conclusion as the Board?

For the following reasons, we shall affirm the circuit court's judgment.

FACTUAL AND PROCEDURAL HISTORY

This case arises from American Towers' application for a special exception under the Harford County zoning regulations to construct a communications tower.¹ A public hearing was held

¹Article VIIIA of the Harford County Code provides for the construction of telecommunications facilities within the county. Harford County Code § 267-53.1 states the purpose of the Article:

The county finds that the provisions of this article are necessary in order to:

- A. Minimize the number of communications towers in Harford County.
- B. Encourage the co-location of telecommunications facilities.
- C. Encourage the use of existing buildings, towers, lights, utility poles, water towers and other similar structures for antennas.
- D. Allow telecommunications providers to build out their systems over time.
- E. Ensure that all telecommunications facilities, including towers, antennas and ancillary facilities, are located and designed to minimize the visual impact on the immediate surroundings and throughout the county.
- F. Require the county to create a government information system database that contains information

(continued...)

before a hearing examiner on June 17, September 18, September 25, and October 2, 2002. Representatives of American Towers testified that it works with wireless communications companies to locate "coverage gaps" and construct towers to host the companies' antennas. Two radio frequency engineers who are employed by wireless communications companies testified that there is a coverage gap in Fallston, which can be remedied with additional antennas.

American Towers investigated several potential sites for the construction of a communications tower within the coverage gap area, and selected a 9½ acre parcel that is located at the intersection of Fallston Road and Pleasantville Road, which it

¹(...continued)

regarding the location of all communications antennas, the location of all communications towers and information relative to the carrying capacity of each tower.

G. Ensure that all telecommunications facilities, including towers, antennas and ancillary facilities, are installed in such a manner as to minimize disturbance to existing vegetation and designed to include suitable landscaping to screen the facility, where necessary.

H. Ensure that if a new communications tower must be built, the tower should be:

- (1) Constructed to accommodate 3 or more providers when practicable;
- (2) Erected in a medium or high intensity commercial zone when practicable;
- (3) Located and designed to minimize its visibility from residential properties; and
- (4) Available for co-location for a government sanctioned public safety use prior to its availability to another provider.

Harford County Code § 267-51 states: "Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district" Harford County Code § 267-53.4.C. provides that "[c]ommunications towers shall be allowed by special exception, up to 199 feet" in the Agricultural District.

would lease from Grandview Christian Church. The property is located in an area that is zoned "Agricultural District." American Towers seeks to construct a 195 foot tall monopole tower on the property, which would host a number of antennas. A real estate appraiser, and a representative of the Department of Planning and Zoning also testified in support of American Towers' application.

John Sommerfeld testified that his residential property abuts the Grandview Christian Church property, and that the proposed tower would sit 500 feet from his house. Sommerfeld, stating that the tower would adversely affect the value of his property, further indicated that the construction of the tower would negatively impact his enjoyment of the rural scenery around his house. Other landowners who live near the proposed tower site opposed American Towers' application based on the expected aesthetic impact of the tower.

The hearing examiner issued an opinion recommending that American Towers' application be granted. After arguments before the Board of Appeals on April 1, 2003, the Board denied the application on April 8, 2003. In its opinion, the Board reviewed the evidence from the hearing, issued findings of fact, and propounded three bases for its decision. First, it stated that American Towers had failed to satisfy the statutory conditions for obtaining a special exception. Specifically, it had failed to prove that the construction of the tower would not have a "material

negative impact on the value, use or enjoyment" of adjoining property. The Board stated that, in reaching its decision on this point, it had rejected the testimony of the real estate expert as irrelevant, and accepted Sommerfeld's testimony that his property value would be negatively affected. The Board stated:

Initially, the Zoning Board of Appeals is not convinced that Applicant has met its burden of satisfying all statutory requirements. In particular, Applicant did not satisfactorily show that it has complied with [the zoning regulations requiring] that the placement of a communication tower at the proposed location will not be [sic] have a material negative impact on the value, use or enjoyment of any **adjoining** parcel. . . .

* * *

[T]he Zoning Board of Appeals believes that there would be a negative impact on the value to [a landowner's] adjoining property. Moreover, the Zoning Board of Appeals further finds that, due to the particular siting and construction of [the landowner's] home which was designed to take advantage of the view which would be impacted by the proposed communication tower, that his enjoyment of his property would be materially negatively impacted.

Second, the Board determined that the application failed to satisfy the test established by the Court of Appeals for evaluating special exceptions, i.e., whether the tower's adverse effects would be greater at the proposed location than they would be elsewhere within the zone. The Board noted that "there are other parcels which could certainly serve the purposes of the wireless carriers." Although it acknowledged that communications towers are "inherently

unattractive," and that they "create adverse visual impacts to their surrounding rural areas," the Board concluded:

The Zoning Board of Appeals believes that the impact at this particular agriculturally zoned location will be greater than that which would occur if the tower was located elsewhere in an agriculturally zoned district.

[T]he proposed tower at its proposed location will be more aesthetically unappealing than it would be otherwise if it were constructed at other locations within an agricultural district.

* * *

[T]he location of the communications tower on the subject property will have greater aesthetic impacts than should it be located elsewhere in an agriculturally zoned parcel.

Third, the Board stated that its denial of the application was justified based on failures by Grandview Christian Church to comply with conditions imposed as part of a previous grant of a special exception:

The Zoning Board of Appeals further makes a specific finding that the co-applicant, Grandview Christian Church who owns the subject parcel, had previously sought and been granted a special exception. Grandview's previous special exception stipulated that the approval contained conditions. The undisputed evidence in this case is that Grandview Christian Church did not comply with a condition placed upon the approval. . . . The Zoning Board of Appeals does not look favorably upon any Applicant's request when the evidence shows that they have not complied with the directives of an earlier case. Accordingly, for this reason alone, the Zoning Board of Appeals believes that denial of the

application for the construction of the proposed communications tower is appropriate.

On May 8, 2003, American Towers petitioned for judicial review in the Circuit Court for Harford County. The court held a hearing on August 22, 2003. In a memorandum opinion and order issued on May 11, 2005, the court reversed the Board's decision, and remanded the case with instructions to grant the application for a special exception. The court stated that "the Board erred when it concluded that there is a greater impact at the proposed location than there would be if located elsewhere on a larger site because there is absolutely no evidence in the record to support such a conclusion." The court likewise rejected the Board's findings that there are other available structures that could be used by the wireless communications companies, and that other available properties would be better suited for the tower. People's Counsel noted an appeal to this Court on June 9, 2005.

DISCUSSION

The Board determines whether it is appropriate to grant a special exception. Md. Code (1957, 2003 Repl. Vol.) Art. 66B, § 4.07(d)(2); Harford County Code § 267-52. A party aggrieved by the Board's decision may seek judicial review in the circuit court. Md. Code (1957, 2005 Repl. Vol.) Art. 25A, § 5(U). Our role "is essentially to repeat the task of the circuit court; that is, to be certain the circuit court did not err in its review." *Mortimer v. Howard Research & Dev. Corp.*, 83 Md. App. 432, 442, 575 A.2d 750

(1990). In other words, we review the decision of the Board, not the decision of the circuit court. *Abbey v. Univ. of Maryland*, 126 Md. App. 46, 53, 727 A.2d 406 (1999).

Our review involves three steps:

1. First, [we] must determine whether the agency recognized and applied the correct principles of law governing the case. [We are] not constrained to affirm the agency where its order "is premised solely upon an erroneous conclusion of law."

2. Once it is determined that the agency did not err in its determination or interpretation of the applicable law, [we] next examine[] the agency's factual findings to determine if they are supported by substantial evidence, i.e., by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion....

3. Finally, [we] must examine how the agency applied the law to the facts. This, of course, is a judgmental process involving a mixed question of law and fact, and great deference must be accorded to the agency. The test of appellate review of this function is "whether, ... a reasoning mind could reasonably have reached the conclusion reached by the [agency], consistent with a proper application of the [controlling legal principles]."

Evans v. Shore Communications, Inc., 112 Md. App. 284, 299, 685 A.2d 454 (1996) (quoting *Comptroller v. World Book Childcraft, Int'l*, 67 Md. App. 424, 438-39, 508 A.2d 148 (1986)).

A. Correct Principles of Law

1. The *Schultz* Test

Because there is a presumption that they are "in the interest

of the general welfare, and therefore, valid," when special exceptions are provided for in a comprehensive zoning plan the applicant has only a limited evidentiary burden. *Schultz v. Pritts*, 291 Md. 1, 11, 432 A.2d 1319 (1981).

[T]he applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. . . . [I]f a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.

Id. at 11-12 (citations omitted).

The adverse effect that mandates denial was defined in *Schultz* as follows:

[A] special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, . . . the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Id. at 15 (emphasis added). It is well-settled that the *Shultz* test is the proper mode of analysis for determining whether a special exception should be denied due to any adverse effects on surrounding properties.² *Mayor & Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 542, 814 A.2d 469 (2002); *Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 642-43, 827 A.2d 961 (2003).

2. The Harford County "Adjoining Property" Test

The property on which American Towers seeks to construct the tower is zoned Agricultural District. The permitted uses in the district include agriculture, agricultural retail sales, residential development, conservation development, rubble landfills, fire stations, and agricultural public events. Harford County Code § 267-34. With respect to special exception uses, the Harford County Code states: "Special exceptions may be permitted when determined to be compatible with the uses permitted as of

² As stated above, the Board also denied American Towers' application on the independent basis that Grandview Christian Church had violated certain conditions attached to the prior grant of an unrelated special exception. In its review, the circuit court found that there was no evidence to support the Board's finding that Grandview Christian had violated any such conditions. We have not been directed by counsel to any authority supporting the Board's belief that "for this reason alone" it could deny American Towers' application. See Harford County Code § 267-51 (empowering the Board to grant special exceptions that are compatible with permitted uses and subject to the regulations and provisions of the code); Harford County Code § 267-52.A. (empowering the Board to impose conditions and other restrictions along with a grant of a special exception); *Schultz, supra* (providing for a two-step special exception analysis). At oral argument, People's Counsel conceded that the landowner's prior violation of conditions attached to the previous grant of a special exception is not a valid legal basis for denying this application. Because this issue is not presented as a proper legal principle on which to deny a special exception, we need not review the Board's underlying factual findings or its legal conclusion on the point. *E. Outdoor Adver. Co.*, 128 Md. App. 494, 514, 739 A.2d 854 (1999).

right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1." Harford County Code § 267-51. As to communications towers, the code states: "Communications towers shall be allowed by special exception, up to 199 feet, in the . . . AG District[]." Harford County Code § 267-53.4.C.

To obtain a special exception for a tower, the applicant must show compliance with certain conditions. Harford County Code § 267-53.6.³ Among those conditions is the requirement that "[t]he placement of the communications tower at the proposed location will not have a material negative impact on the value, use or enjoyment of any adjoining parcel." Harford County Code § 267-53.6.A. We will refer to the section 267-53.6.A. condition as the "adjoining

³Harford County Code § 267-53.6 states:

An applicant proposing a new communications tower in the . . . AG District[] shall demonstrate that the request complies with the following conditions:

A. The placement of the communications tower at the proposed location will not have a material negative impact on the value, use or enjoyment of any adjoining parcel.

B. The applicant has made a diligent attempt to locate the applicant's antenna on an existing tower or nonresidential building or structure.

C. The applicant shall provide the following additional information in support of its application:

(1) Photographs of existing site conditions;

(2) Photographs demonstrating that a balloon test has been conducted, or other evidence depicting the visual impact of the proposed tower within a one mile radius of the tower; and

(3) A map describing the topography of the site and the area within a one-mile radius of the proposed tower.

property test."

As noted, a special exception applicant bears the burden of establishing that the proposed use satisfies the "prescribed standards and requirements." *Schultz*, 291 Md. at 11. In Harford County, a special exception for a communications tower may be granted only if the proposed tower is no higher than 199 feet. Harford County Code § 267-53.4.C. The burden is on the applicant to demonstrate that its proposed use satisfies such standards and requirements. *Schultz*, 291 Md. at 11. Once the applicant has established compliance with the prescribed standards and requirements, the Board must determine whether the use would "have an adverse effect upon neighboring properties in the general area" that would require denial. *Id.* at 12.

The Board stated:

Initially, the Zoning Board of Appeals is not convinced that Applicant has met its burden of satisfying all statutory requirements. In particular, Applicant did not satisfactorily show that it has complied with Section 267-53.6(A)[, the adjoining property test,] which provides that the placement of a communications tower at the proposed location will not be [sic] have a material negative impact on the value, use or enjoyment of any **adjoining** parcel.

Clearly, the Board treated the adjoining property test as one of the general standards and requirements for a special exception similar to the 199 feet height limit.

In our view, however, the adjoining property test differs from

other general standards and requirements to the extent that it is deemed to establish an adverse effect test that does not recognize the inherent adverse effect of the proposed special exception use. We have held that such conditions are subject to the *Schultz* test in the absence of a clear statement that the provision exceeds the *Schultz* standard. *Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md. App. 616, 640-41, 716 A.2d 311 (1998); *Mossburg v. Montgomery County*, 107 Md. App. 1, 19-22, 666 A.2d 1253 (1995).

In *Mossburg*, we reviewed general conditions for the grant or denial of special exceptions under the Montgomery County zoning regulations. We stated:

By reason of the holdings in *Schultz, supra*, and its progeny, such general conditions as are applied to special exceptions are themselves subject to the limitation that the adverse effects must be greater than or above and beyond the effects normally inherent with such a use anywhere within the relevant zones in the regional district (Montgomery County in this case). In the absence of a provision in the zoning statute clearly requiring a stricter standard than *Schultz*, *Schultz v. Pritts* applies.

Id. at 21.

In the present case, we are not persuaded that Hartford County Code § 267-53.6.A. clearly requires a stricter standard than *Schultz*, and therefore, consideration must be given to the inherent adverse effects associated with a communications tower.

In other words, the proper adverse effects analysis under Hartford County Code § 267-53.6.A., in light of *Schultz*, may be

stated thus:

The placement of the communications tower at the proposed location will not have a material negative impact on the value, use or enjoyment of any adjoining parcel [or surrounding properties that is unique or different, in kind or degree, than that inherently associated with placement of the communications tower anywhere within the zoning district].

To the extent that the Board relied on Harford County Code § 267-53.6.A. as a basis for denial of American Towers' application, independent of the *Schultz* test, the Board did not apply the correct legal principles. We owe no deference to the Board's conclusions that were premised on the application of incorrect legal standards. *E. Outdoor Adver. Co.*, 128 Md. App. 494, 514, 739 A.2d 854 (1999). The Board did, however, purport to make the traditional *Schultz* analysis in denying the application. Because that is the proper standard for analyzing the adverse effects of a special exception use, we will review the Board's factual findings and conclusions as they pertain to its determination that American Towers' application failed to satisfy the *Schultz* test.

B. Factual Findings

"In judicial review of zoning matters, including special exceptions and variances, 'the correct test to be applied is whether the [factual] issue before the administrative body is "fairly debatable," that is, whether its determination is based upon evidence from which reasonable persons could come to different

conclusions.'" *White v. North*, 356 Md. 31, 44, 736 A.2d 1072 (1999) (quoting *Sembley v. County Bd. of Appeals*, 269 Md. 177, 182, 304 A.2d 814 (1973)). To determine that an issue is at least fairly debatable, our review of the record must reveal that the board's decision was supported by substantial evidence. *Stansbury v. Jones*, 372 Md. 172, 182-84, 812 A.2d 312 (2002). We have often explained that "substantial evidence" is "at least 'a little more than a scintilla of evidence' to support the Board's scrutinized action." *Lucas v. People's Counsel for Baltimore County*, 147 Md. App. 209, 225, 807 A.2d 1176 (2002) (quoting *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 120 Md. App. 444, 466, 707 A.2d 866 (1998), *vacated in part*, 352 Md. 645, 724 A.2d 34 (1999)).

The Board observed that all "communications towers create adverse visual impacts to their surrounding rural areas." Indeed, the Board found that "the proposed tower at that location will have an adverse aesthetic impact" and the "proposed landscaping" around the tower "will provide little, if any, screening for the tower itself." The Board further determined that "the proposed tower at its proposed location will be more aesthetically unappealing than it would be otherwise if it were constructed at other locations within an agricultural district." The Board reasoned that the Agricultural District contains many large parcels of land, and that placement of the tower in a vast agricultural field would have a lesser adverse effect than placement near a residential property:

The Zoning Board of Appeals believes that the construction of a 195 foot tall monopole cellular tower in the middle of a farm consisting of numerous acres is significantly different in scope than the siting of the same cell tower on a parcel of not more than 9¹/₂ acres within 500 feet of a residence which has been specifically constructed to take advantage of the visual aesthetics which would be obstructed by this construction.

People's Counsel directs us to *Bd. of County Comm'rs for Cecil County v. Holbrook*, 314 Md. 210, 550 A.2d 664 (1988), as support for the Board's finding. The Court in *Holbrook* determined that the Board had properly rejected an application for a special exception to place a mobile home within 150 feet of a rural single-family home:

As a general matter, we note that the Board justifiably assumed that the conspicuous presence of a mobile home will lower adjacent property values. . . .

Moreover, we believe that the facts and circumstances of this case, evidenced by the undisputed testimony and photographic exhibits, clearly satisfy the *Schultz* standard of particular adverse impact. . . .

We find no cause to question the Board's conclusion that the mobile home, in this particular location, would impair neighboring property value to a greater extent than it would elsewhere in the zone. Countless locations exist within the zone, and indeed, within Holbrook's own property, where the presence of a mobile home would have no effect whatsoever upon adjoining property values. If, for example, trees or topography hid the mobile home from the view of the neighboring property owners, there would remain, as the Board's counsel conceded, absolutely no grounds for denying a special exception

permit.

Id. at 219-20.

We believe that this case differs significantly from *Holbrook*. The Board acknowledged that the negative "adverse visual impacts" of a communications tower are inherent in the nature of the structure. A 195 foot tall monopole tower cannot be completely concealed by trees and will be visible from neighboring properties regardless of where it is located within the zone.

The Board also noted the testimony of the adjoining landowner that his home had been strategically located to maximize his enjoyment of the rural scenery, and that the construction of the tower would frustrate that purpose. The Board pointed to the general character of the zone and reasoned that there are conceivably other sites where the adverse effects would be lesser. But the Board cited no evidence from the record that explained why others in the zone would not be similarly adversely affected by the construction of a communications tower within sight of their homes.

The Board's reasoning ignores the general diversity of permitted uses within the Agricultural District, which include not only agriculture, but also residential development. Harford County Code § 267-34.D. Arguably, placement of a communications tower almost anywhere within the Agricultural District has the potential for adverse effects on the use and enjoyment, particularly "visual aesthetics," of residential property. In addition, the Board's

rationale for its finding minimizes any impact that a communications tower would have on an agricultural landowner's enjoyment of the "visual aesthetics" of his or her property.

This case bears similarity to previous special exception tower cases. In *Evans v. Shore Communications, Inc.*, 112 Md. App. 284, 685 A.2d 454 (1996), we reviewed a denial of a special exception application for construction of a communications tower in an agricultural zone in Talbot County. We observed that the Board had "opined that the tower would be detrimental to the use of nearby residents in terms of the use and enjoyment of the rural character of their property." *Id.* at 305. We concluded:

The Board fails to state how construction of the tower in question undermines the rural character of the neighborhood and somehow transforms the area into a neighborhood antithetical in character to that of a rural neighborhood. The uniqueness referred to by the Board must be in terms of adverse effects and the adverse effects must be above and beyond those inherently associated with the location of a special exception use anywhere else within the zone.

Id.

In *AT & T Wireless Servs. v. Mayor & City Council of Baltimore*, 123 Md. App. 681, 720 A.2d 925 (1998), we considered the Board's denial of a special exception for a communications tower in a residential zone in Baltimore City. We noted that property values could be adversely affected by "the negative aesthetic consequences of having the tower nearby." *Id.* at 693. We

determined that the Board had rejected the application without sufficient evidence that the adverse effects were particular to the location at issue:

It is true, as Baltimore City points out, that the trees that surround the tower facility would not shield the tower facility from the view of nearby property owners for many months in the fall and winter. But unlike the situation in *Holbrook*, in the case at hand there was simply no evidence that there was any place within an R-1 zone that a 133 foot monopole could be located where it could not be seen by adjoining property owners.

Id. at 696.

In sum, the Board failed to adequately demonstrate that the inherently adverse effects of a communications tower are unique to the proposed location. We conclude, therefore, that the Board's finding was not supported by substantial evidence.

The Board also found that some of the wireless carriers whose antennas would be attached to the tower could locate those antennas on other tall structures already in existence in the Agricultural District. Similarly, the Board found that there are other parcels within the District that could be used for the proposed tower.

In *Holbrook*, the Court of Appeals pointed to the "[c]ountless" alternative locations available for the trailer. *Holbrook*, 314 Md. at 220. The availability of those sites was a relevant factor, however, because the evidence justified the assumption that, placed at an alternative location, the trailer would not have the same deleterious effects on surrounding property values as it would if

placed at the proposed site. *Id.* at 219-20.

In *AT & T Wireless*, the opponents of the communications tower had identified a possible alternative site at a nearby high school. On appeal, we determined that the alternative location was not in the same zone as the proposed site, and noted that there was no evidence that the high school was a realistic option for AT & T Wireless Services. We further reasoned: "[T]here was no evidence that the tower, if it were located at Edmondson High School, would be less visibly intrusive to neighboring properties than it would be if located at the proposed site." *AT & T Wireless*, 123 Md. App. at 695.

The possible existence of other potential sites for the tower is irrelevant where there is a dearth of evidence that construction of the tower at an alternative site would eliminate the adverse effects of the tower on surrounding properties. The Board's generalized finding, even if supported by substantial evidence, that alternative sites are available within the zone does not inform the required analysis.

C. Application of Law

Ultimately, we must determine whether the conclusion reached by the Board through its application of the law to the facts is one "a reasoning mind could reasonably have reached . . . consistent with a proper application of the [controlling legal principles]." *Evans*, 112 Md. App. at 299 (quoting *World Book Childcraft*, 67 Md.

App. at 439). It is useful at this point to reiterate the role of the Board in considering an application for a special exception.

In *Evans*, we explained:

The language of *Schultz* makes clear that a special exception is a valid zoning mechanism that delegates only limited authority to an administrative board to determine the use to be permissible in the absence of any fact or circumstances that negate the presumption. The county council has already legislatively determined, by designating the use as a special exception, general compatibility with the other uses in the zone. . . . The only authority delegated to the Board was a determination of whether the general neighborhood would be adversely affected and whether the use was in harmony with the general purpose and intent of the Comprehensive Plan.

Evans, 112 Md. App. at 303.

In this case, although the Board ostensibly applied the *Schultz* test, we hold that its decision to deny American Towers' application for a special exception was not supported by substantial evidence. Nevertheless, because it rejected the application, the Board did not consider the applicability of any conditions. The case should be remanded to the Board to consider what, if any, lawful conditions should be imposed on this special exception use to minimize its inherent adverse effect on the immediate surroundings.

JUDGMENT VACATED; CASE REMANDED TO
THE CIRCUIT COURT FOR HARFORD COUNTY
WITH INSTRUCTIONS TO REMAND THE CASE
TO THE HARFORD COUNTY BOARD OF
APPEALS FOR ADOPTION OF FINDINGS OF

FACT AND CONCLUSIONS OF LAW GRANTING
THE SPECIAL EXCEPTION (WITH OR
WITHOUT APPROPRIATE AND LAWFUL
CONDITIONS) .

COSTS TO BE PAID BY APPELLANT.